

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE BOARD OF PEACE OFFICER STANDARDS AND TRAINING

In the Matter of the Inactive Peace
Officer License of Clayton Robert
VanWert, Inactive License No. 7459

**FINDINGS OF FACT,
CONCLUSIONS
AND RECOMMENDATION**

The above-entitled matter came on before Administrative Law Judge M. Kevin Snell ("ALJ") on April 8, 2009, for a prehearing conference. The prehearing conference was scheduled pursuant to a Notice and Order for Hearing and Prehearing Conference dated March 4, 2009.

Michele M. Owen, Assistant Attorney General, 445 Minnesota Street, Suite 1800, St. Paul, Minnesota 56347, appeared on behalf of Board of Peace Officer Standards and Training ("POST Board"). The Respondent, Clayton Robert VanWert, did not appear in person or by counsel. The record closed on April 25, 2009, upon the Licensee's default and failure to respond to the POST Board's Motion for Disposition of Case Adverse to Defaulting Party.

STATEMENT OF THE ISSUE

Should disciplinary action be taken against the Respondent for violations of Minn. R. 6700.1600.C, Minn. R. 6700.1600.L, and Minn. R. 6700.1600.M?

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On March 4, 2009, a copy of the Notice and Order for Hearing and Prehearing Conference was sent via certified mail to Respondent Clayton Robert VanWert at his Bemidji, Minnesota, address as it appears on the Affidavit of Service by Certified United States Mail on file herein.¹

2. On March 12, 2009, Respondent acknowledged receipt of the Notice and Order for Hearing and Prehearing Conference by signing the Certified Mail receipt form.²

¹ Affidavit of Service of C.O. Ransom.

² Exhibit 2 to POST Board's Motion for Disposition of Case Adverse to Defaulting Party.

3. The Bemidji, Minnesota, address in the Affidavit of Service and in the Notice and Order for Hearing and Prehearing Conference is the last address of Respondent known to the POST Board.³

4. The Respondent did not file a Notice of Appearance, did not request a continuance, or request any other relief prior to the prehearing conference, did not appear at the prehearing conference, and did not respond to the POST Board's Motion for Disposition of Case Adverse to Defaulting Party.

5. The Notice and Order for Hearing and Prehearing Conference contained the following informational warning:

Respondent's failure to appear at the prehearing conference or the hearing may result in a finding that the Respondent is in default, that the Board's allegations contained in this Notice and Order may be accepted as true, and its proposed action may be upheld.

6. Because Respondent failed to appear, he is in default.

7. Pursuant to Minn. R. 1400.6000, the allegations contained in the Notice and Order for Hearing and Prehearing Conference may be taken as true and incorporated by reference into these Findings of Fact.

8. On July 1, 1979, Respondent took and passed the POST Board's examination for a peace officer's license. Respondent worked at the Beltrami County Sheriff's Office from July 1, 1979, to June 30, 1982. Respondent has taken and passed the restoration test on August 22, 1996, October 20, 2000, and July 17, 2007. Respondent's license is currently inactive and due for renewal on June 30, 2009.⁴

9. On February 29, 1988, Respondent pled guilty in Beltrami County District Court to Theft by Check, a misdemeanor, in violation of Minn. Stat. § 609.52. Respondent was sentenced to: serve 90 days in the County jail, execution stayed for one year; pay a \$500.00 fine, a \$50.00 surcharge, and a \$6.00 library Fee.⁵

10. On July 26, 1988, Respondent pled guilty in Beltrami County District Court to Theft by Check, a gross misdemeanor, in violation of Minn. Stat. § 609.52. Respondent was sentenced to serve 100 days in the County jail, execution stayed for two years, pay a \$750.00 fine, a \$75.00 surcharge, a \$6.00 library fee, \$610.62 restitution, and \$250.00 to the Public Defender Fund.⁶

11. Respondent did not report his convictions to the POST Board.⁷

³ Testimony of Sheryl Ann Waddick, Standards Coordinator of the POST Board.

⁴ Notice and Order for Hearing and Prehearing Conference.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

12. On July 8, 2008, the POST Board sent Respondent by United States Certified Mail, a notice to attend the Complaint Investigation Committee ("Committee") meeting. Respondent signed and returned the Certified Mail Return Receipt to the Board. Respondent failed to appear at the Committee meeting on August 20, 2008.⁸

13. On April 15, 2009, the POST Board submitted to the ALJ and served upon Respondent by United States Certified mail its written Motion for Disposition of Case Adverse to Defaulting Party.

Based on these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The ALJ and the POST Board are authorized to consider the charges against Respondent under Minn. Stat. §§ 14.50, 214.10 and 626.8432.

2. Respondent received due, proper and timely notice of the charges against him, and of the time and place of the hearing. This matter is, therefore, properly before the POST Board and the ALJ.

3. The POST Board has complied with all relevant substantive and procedural legal requirements of statute and rule.

4. Under Minn. R. 1400.6000, a contested case may be decided adversely to a party who defaults. On default, the allegations of, and the issues set out in the Notice and Order for Hearing or other pleading may be taken as true or deemed proved without further evidence.

5. Under Minn. R. 1400.6600, a party has 10 days to respond to a motion of an adverse party.

6. More than 10 days has transpired since service of the POST Board's written Motion for Disposition of Case Adverse to Defaulting Party.

7. The Respondent is in default herein as a result of his failure to appear at the prehearing conference and respond to the POST Board's default motion.

8. All allegations in the Notice and Order for Hearing and Prehearing Conference are adopted as true.

9. Minn. Stat § 626.8432, subd. 1(a) provides in pertinent part, that the POST Board may refuse to issue, refuse to renew, refuse to reinstate, suspend, revoke eligibility for licensure, or revoke a peace officer or part-time peace officer license for any of the following causes:

⁸ *Id.*

. . .

(3) a violation of the standards of conduct set forth in Minnesota Rules, chapter 6700.”

10. Minn. R. 6700.1600 provides in pertinent part, that “Violation of any of the following standards of conduct by a licensee constitutes grounds for disciplinary action:

. . .

C. being convicted of a felony or gross misdemeanor in this state, or in any other state or federal jurisdiction of an offense that would constitute a felony or gross misdemeanor if committed in Minnesota including a finding or verdict of guilt, whether or not the adjudication of guilt is withheld or not entered, an admission of guilt, or no contest;

. . .

L. being convicted, including a finding or verdict of guilt, whether or not the adjudication of guilt is withheld or not entered, an admission of guilt, or a no contest plea of a violation of Minnesota Statutes, sections . . . 609.52,

. . .

M. failing to cooperate with an investigation of the board as required by part 1600.1610, subpart 4; . . .”

11. Minn. R. 6700.1610, subp. 2 provides, in pertinent part, that:

A licensee shall report to the board and chief law enforcement officer any action, inaction, or condition of that licensee which the licensee reasonably believes would constitute grounds for disciplinary action under any of the board’s regulatory provisions.

12. Minn. R. 6700.1610, subp. 3, provides that:

Reports required by this part must be submitted no later than 90 days after learning of the reportable event.

13. Respondent’s misdemeanor conviction was a violation of Minn. R. 6700.1600.L.

14. Respondent’s gross misdemeanor conviction was a violation of Minn. R. 6700.1600.C and L.

15. Both of Respondent’s convictions were reportable events under Minn. R. 6700.1610, subp. 2.

16. Respondent failed to report his two convictions to the POST Board, in violation of Minn. R. 6700.1610, subp 2.

17. Minn. R. 6700.1600, subp. 4. provides in pertinent part, that:

A licensee who is the subject of an investigation, or who is questioned in connection with an investigation, shall cooperate fully with the investigation. Cooperating includes responding fully and promptly to questions raised by or on behalf of the board relating to the subject of the investigation, providing copies of records in the licensee's possession relating to matters under investigation, assisting the board in its investigation which includes . . . appearing at conferences or hearings scheduled by the board.

18. Respondent's failure to appear at the August 20, 2008, meeting of the POST Board's Complaint Investigation Committee is a violation of Minn. R. 6700.1600, subp. 4.

19. Disciplinary action against the Respondent is in the public interest.

20. The Administrative Law Judge adopts as Conclusions any Findings that are more appropriately described as Conclusions, and as Findings any Conclusions that are more appropriately described as Findings.

Based upon these Conclusions the Administrative Law Judge makes the following:

RECOMMENDATION

Based upon these Conclusions, the Administrative Law Judge recommends that: the POST Board take disciplinary action against the Peace Officer License of Clayton Robert VanWert.

Dated: May 7, 2009

s/M. Kevin Snell

M. KEVIN SNELL

Administrative Law Judge

Reported: Default, digitally recorded
No transcript prepared

NOTICE

This report is a recommendation, not a final decision. The POST Board will make the final decision after a review of the record. The POST Board may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendation. Under Minn. Stat. § 14.61, the final decision of the POST Board shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. Under Minn. Stat. §§ 14.61, the parties adversely affected have ten (10) calendar days to submit exceptions to this Report and request to present argument to the POST Board. The record shall close at the end of the ten-day period for submission of exceptions. The POST Board then has ten (10) working days from the close of the record to issue its final decision. Parties should contact Neil W. Melton, Executive Director, Peace Officer Standards and Training Board, 1600 University Avenue, Suite 200, St. Paul, MN 55104-3825, (651) 643-3060, to learn the procedure for filing exceptions or presenting argument.

If the POST Board fails to issue a final decision within 90 days of the close of the record, this Report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the Report and the presentation of argument to the POST Board, or upon the expiration of the deadline for doing so. The POST Board must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.63, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

M. K. S.